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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,814

02/04/2005

Hideki Ishihara

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EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

06/11/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/523,814	Applicant(s) ISHIHARA ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/4/05; 12/6/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-2 and 6 in the reply filed on March 4, 2008 is acknowledged. The traversal is on the ground(s) that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctiveness between the identified groups and that there is shown no burden in searching the claims of the two groups. This is not found persuasive because as stated in the previous office action, the inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: combination of ingredients A, B and C in Group I are not required in Group II, and the combination of ingredients E, F and G in Group II are not required in Group I, and that the indicated species are distinct from each other. Searching the two distinct groups which include numerous different species and combination of different species is a serious burden.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 3-5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 4, 2008.

Claim Rejections - 35 USC § 112

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 lacks support for "The hair cosmetic composition" in line 1 with respect to claim 1 which refers to a fragrance composition". Could it be that Applicant meant "A hair cosmetic composition...comprising the fragrance composition..."? It is suggested that the dependency be amended to reflect the elected claims.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rapisarda et al. (US Patent No. 5,089,162), hereinafter "Rapisarda".

Rapisarda teaches PERFUME COMPOSITION B which comprises, in percent by weight of the perfume composition, Menthone racemic 0.5; 3-nonanone 0.5; Methyl heptenone 2.0; Oncictal 0.5; Opopanax oil 2.5; Verdyl acetate, which reads on

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Component B(i) 2.0; Dimetol 30.0; Dipentene 122, which reads on Component (C) 60.0; Galaxolide 50 (i.e. musk) 2.0 (see col. 21, lines 13-21). Even though Rapisarda does not explicitly disclose the pH of the perfume composition, it would be inherent for the perfume composition of Rapisarda to exhibit a pH within those recited because the same ingredients having the same proportions have been utilized. Hence, Rapisarda anticipates the claim. Even if the teachings of Rapisarda is not sufficient to anticipate the claim, it would have been nonetheless obvious to reasonably expect the pH of the perfume composition of Rapisarda to exhibit a pH within those recited because similar, if not the same ingredients, have been utilized.

8. Claims 1 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Sprecker et al (US Patent No. 6,596,686), hereinafter "Sprecker".

Sprecker teaches an herbal floral perfume which comprises Benzyl salicylate 13.0 wt%, GALAXOLIDE 50® 6.0 wt%. Cis-3-hexenyl salicylate 7.0 wt% Hexyl salicylate 4.5 wt%, Limonene 3.0 wt%, Methyl-4-methoxyphenyl-DH-pyran mixture 5.0 wt% (see Example 1, col. 4, lines 6-35). All the salicylates mentioned above read on Component (B)(i). Sprecker also teaches that the perfume mixture can be used in hair care products (see col. 3, line 2). Even though Sprecker does not explicitly disclose the pH of the perfume composition, it would be inherent for the perfume composition of Sprecker to exhibit a pH within those recited because the same ingredients having the same proportions have been utilized. Hence, Sprecker anticipates the claims. Even if the teachings of Sprecker are not sufficient to anticipate the claims, it would have been

nonetheless obvious to reasonably expect the pH of the perfume composition of Sprecker to exhibit a pH within those recited because similar, if not the same ingredients, have been utilized.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapisarda or Sprecker as applied to claim 1 above, and further in view of Nakatsu et al. (US Patent No. 5,965,518), hereinafter "Nakatsu".

Rapisarda or Sprecker teaches the features as described above. Rapisarda or Sprecker, however, fails to specifically disclose sulfur-containing compounds in the perfume composition.

It is known from Nakatsu to add sulfur-containing compounds in perfume compositions to impart antimicrobial activity to the perfume composition (see abstract; col. 3, lines 29-32).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate sulfur-containing compounds into the perfume compositions of Rapisarda or Sprecker because this would impart antimicrobial activity to the perfume compositions as taught by Nakatsu.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796